

**Iowa Department of Natural Resources
Environmental Protection Commission**

ITEM

13

DECISION

TOPIC

**Notice of Intended Action -Chapter 65 – Definitions and Regulations
Pertaining to NPDES Permits**

The Commission is requested to grant permission to proceed with rulemaking and publish a Notice of Intended Action to amend 567 Iowa Administrative Code Chapter 65 – Animal Feeding Operations. The purpose of the amendments is to make corrections so the administrative rules are equivalent to the Code of Iowa and consistent with federal law. The proposed corrections are made to definitions, land application practices to prevent environmental damage and nutrient management plan requirements with associated phosphorus index implementation. In addition, changes are made where the rules indicated specific dates which are now past.

Gene Tinker, Coordinator
Animal Feeding Operations
Environmental Services Division

December 22, 2008

ENVIRONMENTAL PROTECTION COMMISSION [567]

Notice of Intended Action

Pursuant to the authority of Iowa Code sections 459.103 and 459A.104, the Environmental Protection Commission proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendments are corrections to definitions and requirements related to animal feeding operations that are needed to make Chapter 65 consistent with statutory amendments during the 2008 legislative session. Additional changes are proposed to bring state regulations into compliance with federal regulations and to update the rules where dates related to these issues were stated and those dates are now past.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 3, 2009. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895; email gene.tinker@dnr.iowa.gov.

Also, there will be public hearings the week of February 23, 2009 at various locations across the state, at which time persons may present their views either orally or in writing. At the hearing people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 459.103, 459.312, 459.314, 459A.104, 459A.208 and 459A.303, and 2008 Iowa Acts, Chapter 1191, Sections 143 through 148.

The following amendments are proposed.

ITEM 1. Amend rule 567-- 65.1 by amending one definition and adding a definition as follows:

“Animal feeding operation” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for a NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch.26, as amended, an ~~An~~ animal feeding operation does not include a livestock market. Open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

“NPDES permit” means a written permit of the department pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO. CAFO means the same as defined in 65.100.

ITEM 2. Amend subparagraph 65.3(3)g“1” as follows:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program, if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 200 or 800-foot setbacks.

ITEM 3. Amend paragraph 65.17(6)“b” as follows:

b. Crop schedule. Crop schedules shall include the name and total acres of the planned crop on a field-by-field or farm-by-farm basis where manure application will be made. A map may be used to indicate crop schedules by field or farm. The planned crop schedule shall name the crop(s) planned to be grown for the length of the crop rotation beginning with the crop planned or actually grown during the year this plan is submitted or the first year manure will be applied. ~~The confinement feeding operation owner shall not be penalized for exceeding the nitrogen or phosphorus application rate for an unplanned crop, if crop schedules are altered because of weather, farm program changes, market factor changes, or other unforeseeable circumstances.~~

ITEM 4. Amend rule 567—65.100, definitions of “animal feeding operation,” “animal unit capacity” and “production area,” as follows:

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for a NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. ch.26, as amended an animal feeding operation does not include a livestock market.

~~Pursuant to federal regulations, a livestock market could satisfy the definitions of an AFO and a CAFO and thus be subject to NPDES permit requirements. In order to implement the federal NPDES permit program, the commission must adopt rules which are no less stringent than federal regulations. Therefore, for the purposes of the NPDES permit program, an AFO can include a livestock market.~~

“Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an open feedlot operation. Only for purposes of determining whether an open feedlot operation must obtain an operating permit, the animal unit capacity of the animal feeding operation includes the animal unit capacities of both the open feedlot operation and the confinement feeding operation if all of the following occur:

1. The animals in the open feedlot operation and the confinement feeding operation are all in the same category of animals as used in the definitions of large and medium CAFOs in 40 CFR pt. 122.
2. The closest open feedlot operation structure is separated by less than 1250 feet from the closest confinement feeding operation structure.
3. The open feedlot operation and the confinement feeding operation are under common ownership or management.

“Production area” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate

uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

ITEM 5. Amend subparagraph 65.101(6)“b”(1) as follows:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied. For purposes of the NPDES permit program, if applicable, the person must also demonstrate that a setback or buffer is not necessary because implementation of alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 200 or 800-foot setbacks.

ITEM 6. Amend subrule 65.104(7) as follows:

65.104(7) *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. Applications ~~submitted after September 30, 2006,~~ shall include a nutrient management plan as required in rule 65.112(459A). Applications involving AT systems shall include results of predictive computer modeling as required by 65.110(6)“a”. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system.

ITEM 7. Amend paragraph 65.105(3)“a” as follows:

a. ~~For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006,~~ a ~~A~~ nutrient management plan as provided in rule 65.112(459A).

ITEM 8. Amend subrule 65.112(1) as follows:

65.112(1) The owner of an open feedlot operation which has an animal unit capacity of 1,000 animal units or more or which is required to be issued an NPDES permit shall develop and implement a nutrient management plan meeting the requirements of this rule ~~by December 31, 2006.~~ The owner of an open feedlot operation that seeks to obtain or is required to be issued an NPDES permit after December 31, 2006, shall develop and implement a nutrient management plan meeting the requirements of this subrule no later than the date the NPDES permit becomes effective. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

ITEM 9. Amend subrule 65.112(2) as follows:

65.112(2) Not more than one open feedlot operation shall be covered by a single nutrient management plan. For an open feedlot operation that is required to have an NPDES permit and the animal feeding operation includes an open feedlot operation and a confinement feeding operation, the nutrient management plan must include both the open feedlot operation and the confinement feeding operation if the confinement feeding operation does not have a manure management plan. If the confinement feeding operation portion of the animal feeding operation does have a manure management plan as required in 65.16 and 65.17, the confinement feeding operation portion shall not be included in the nutrient management plan; however, in that event the manure management plan must be amended to include the information specified in 65.112(8)“e.”

ITEM 10. Amend subparagraph 65.112(8)“a”(1) as follows:

(1) A phosphorus index of each field in the nutrient management plan, as required in 65.17(17)“~~a~~,” including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P₂O₅) available to be applied from the open feedlot operation shall be included.

ITEM 11. Amend paragraph 65.112(8)“e” by inserting new subparagraphs (7), (8) and (9) and renumbering current subparagraph (7) accordingly:

(7) Appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States.

(8) Protocols for appropriate testing of manure, process wastewater, open feedlot effluent and soil.

(9) Protocols to land apply manure, process wastewater or open feedlot effluent in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, process wastewater or open feedlot effluent.

Date

Richard A. Leopold, Director